

AMENDMENTS TO THE DRAWINGS

Attachment: New Drawing Sheet

REMARKS/ARGUMENTS

The Applicant's representative has carefully reviewed the Examiner's Office Action of June 30, 2005, in which the Examiner: (1) objected to the drawings under 37 CFR 1.83(a) because they fail to show the valved cap of figures 14-16; (2) objected to the drawings under 37 CFR 1.83(a) for failing to show the label called for in claim 17; (3) objected to the drawings under 37 CFR 1.84(p)(5) for failing to include reference numerals 50, 52, 54, 56a, 56b, 56c, 57, 58, 59 60 , 62, 66, and 68; (4) objected to claim 15 for improper punctuation; (5) rejected claim 17 under 35 USC 112(1) for failing to comply with the written description requirement; (6) rejected claims 4 and 17 under 35 USC 112(1) as being indefinite; (7) rejected claims 1, 2, 15, and 16 under 35 USC 103(a) as obvious over Salemi (US 5,524,782) in view of Marino (US 5,605,230); (8) rejected claims 3-6 and 18 under 35 USC 103(a) as obvious over the prior art as applied to claims 1 and 15 as obvious over the prior art as applied to claims 1 and 15 in further view of Irish (US 3,720,343); (9) rejected claim 7 under 35 USC 103(a) as obvious over the prior art as applied to claim 1 in further view of Roof (US 4,919,285); (10) rejected claim 17 under 35 USC 103(a) as obvious over the prior art as applied to claim 15 in further view of Crum (US 5,022,526); and (11) rejected claims 19-22 under 35 USC 103(a) as obvious over Hasper (US 5,669,427) in view of Irish.

Regarding Par. 1 of the Office Action, please note that claims 8-14 are being withdrawn based on the restriction requirement. Applicant reserves the right to pursue these and other claims in a divisional and/or continuation application.

Regarding Par. 2 of the Office Action, the attached sheet of drawings includes Figures 14-16 which were inadvertently omitted. These figures do not constitute new matter. Indeed, the structures shown in Figures 14-16 are disclosed in the specification (see specifically pages

17-21) combined with US 5,904,259, which is incorporated into the application by reference on page 20 of the specification. The sleeve and label shown in Figures 14-16 are thoroughly described at pages 18-20 of the specification.

With respect to the objections in Paragraphs 2, 3 and 4 of the Office Action, the Applicant herewith submits Figures 14 through 16. Figures 14 through 16 are responsive to the Examiners objections by showing reference numerals 50, 52, 54, 56a, 56b, 56c, 57, 58, 59, 60, 62, 66, and 68. Figure 16 also shows a label 60, wherein a sleeve together with the label, substantially cover exterior portions of a cap. The disclosure of these figures does not constitute new matter. Indeed, the structures shown in Figures 14-16 are disclosed in the specification (see specifically pages 17-21) combined with U.S. Pat. 5,904,259, which is incorporated into the application by reference on page 20 of the specification.

In Par. 5 of the Office Action, the Examiner objected to claim 15 for improper punctuation. In response, the Applicant hereby amends claim 15 to add a comma in line two after "sleeve" and a colon in line two after "comprising."

In Par. 6 of the Office Action, the Examiner rejected claim 17 under 35 USC §112, ¶1 as failing to comply with the written description requirement. The Examiner asserts that the claim contains subject matter which was not sufficiently described in the specification. The Examiner further asserts that there is no disclosure for a closed cap having a label substantially covering exterior portions of the cap in addition to the shrink sleeve as set forth in claim 17.

The applicant respectfully disagrees with the Examiner. With reference to pages 17-21, the specification discloses a cap 50 which is closed on one end with an inner cap 62. The cap 50 is described as having a label 60 which is attached to a top of the cap 50 (see also US 5,904,259

which is incorporated by reference). With specific reference to the paragraph bridging pages 18-19, a “fully shrunk sleeve 56c grips and is in substantial contact with the exterior of the skirt 54, and the ends of the sleeve 56c cover the peripheral edge of the label 60.” It is the applicants belief that a person of ordinary skill in the art would understand this disclosure to mean that the sleeve together with the label substantially cover exterior portions of the cap.

Nevertheless, the applicant hereby amends the paragraph bridging pages 18-19 to specify that the sleeve, together with the label, substantially cover the exterior portions of the cap. This amendment does not constitute new matter; the claims as filed in the original specification are part of the disclosure and therefore, if an application as originally filed contains a claim disclosing material not disclosed in the remainder of the specification, the applicant may amend the specification to include the claimed subject matter. *In re Benno*, 768 F.2d 1340, 226 USPQ 683 (Fed. Cir. 1985).

In Par. 7 of the Office Action, the Examiner rejected claims 4 and 17 under 35 USC §112, ¶2 as being indefinite. Specifically, the Examiner rejected claim 4 for insufficient antecedent basis for the term “bumper roll” and rejected claim 17 on the basis that there is no disclosure for a closed cap having a label substantially covering exterior portions of the cap.

With respect to the Examiner’s rejection of claim 4, the Applicant hereby amends claim 1 to replace the term “transfer ring” with the term “bumper roll.”

With respect to the rejection of claim 17, the Applicant respectfully disagrees with the Examiner and refers the Examiner to the Applicants discussion of the rejection based on 35 USC §112, ¶1 discussed above. In response to the Examiner’s question of whether the label covers the sleeve as well as the top wall, the Applicant submits that a person of ordinary skill in the art would understand the words of the claims to encompass any of the following: 1) a sleeve that

covers the peripheral edge of a label and 2) a label that covers the peripheral edge of a sleeve, or 3) a label with a peripheral edge which is adjacent to a peripheral edge of a sleeve. Any configuration that is a combination of a sleeve and a label is encompassed by the words of the claim, so long as the label and sleeve together substantially cover exterior portions of the cap. The Examiner also asks how the sleeve engaging formations are impacted by the limitations of claim 17. The Applicant notes that neither claim 17 nor claim 15, from which claim 17 depends, call for sleeve engaging formations. Nevertheless, sleeve engaging formations would not be impacted in any significant way by an arrangement whereby the sleeve and label cover or protect all exterior portions of the cap.

In Par. 9 of the Office Action, the Examiner rejected claims 1, 2, 15, and 17 as obvious over Salemi in view of Marino. The Examiner opines that Salemi teaches all claim limitations except for the limitation that the sleeve has printing or coloring thereon, and that Marino teaches to print on the sleeve. The Applicant respectfully disagrees with the Examiner on the basis that Marino does not teach to add print or coloring *to signify the contents and/or the supply of said container*.

The Applicant submits that the Examiner's conclusion of obviousness is based on improper hindsight reasoning. The reference upon which the Examiner relies in his rejection, Marino, does not teach to add print to the sleeve in order to signify on the contents of the container. Indeed, Marino does not teach any specific type of print for a sleeve. It is the Applicant's belief that the Examiner used information gleaned from the Applicant's disclosure to suggest that the printing taught in Marino is of the type which signifies the contents of the container.

In Par. 10 of the Office Action, the Examiner rejected claims 3-6 and 18 as obvious over the prior art as applied to claims 1 and 15 in further view of Irish. It is the Examiner's position that Salemi teaches the claimed invention except for the sleeve engaging formations on the transfer ring of the container neck. The Examiner asserts that Irish teaches that it is known to provide a container neck transfer ring with indentations.

The Applicant respectfully disagrees with the Examiner on the basis that neither Salemi nor Marino nor Irish nor any combination thereof teaches transfer ring indentations which cooperate with a sleeve, as called for in the rejected claims. Instead, Irish teaches a notched transfer ring wherein a cap sleeve covers and engages with the transfer ring. It is important to note that the cap sleeve (or shrink tube) of Irish is substantially different in structure than the shrink sleeve in the present invention. The shrink tube of Irish, once applied to a bottle, serves as a cap for the bottle. In contrast, the shrink sleeve of the present invention is applied over a cap. Consequently, the combination of the shrink sleeve of Salemi and the cap and bottle combination of Irish would not result in the invention because the transfer ring of Irish would not cooperate with the sleeve of Salemi, being that the cap of Irish is covering the transfer ring.

Furthermore, the Examiner has not established a *prima facie* case of obviousness for claims 4-6. The Examiner has not asserted that the references disclose a series of radially inwardly formed indentations on the outermost periphery of said bumper roll, a series of indentations on underside of said bumper roll, or a series of projections extending outwardly from an outer surface of said bumper roll.

In Par. 11 of the Office Action, the Examiner rejects claim 7 as obvious over the prior art as applied to claim 1 in further view of Roof. The Examiner asserts that "Salemi as modified teaches the claimed closure arrangement except for the plastic closure having a color other than

white.” The Examiner further asserts that Roof teaches it is known to mold plastic closure caps of various colors.

First, please note that claim 7 calls for the cap to be injection molded without the use of any pigment or colorant other than white, i.e. the cap is white or non-pigmented. Consequently, the cited references do not teach all the limitations of claim 7; Roof does not teach a white or non-colored cap.

Second, it is the Applicants belief that the combination of a white or non-pigmented cap and a shrink sleeve containing printing and/or coloring to signify the contents and/or the supply of said container, as called for in claim 7, is contrary to accepted wisdom. As discussed in the specification, bottlers have traditionally used different colored caps to differentiate one kind of milk from another, especially in the field of bottled milk. For example, red caps may be used to designate whole milk, light blue for skim milk, yellow for 1%, etc. See specifically page 4, last paragraph. The present invention allows a bottler to use caps of a single color, e.g., white or pigment-free, for all kind of milk, and then relies upon shrink sleeves or bands of different colors placed over the cap and neck of a bottle to differentiate one kind of milk from another. There are many benefits of having a single color (i.e. white or non-pigmented) cap including: reduced manufacturing costs; reducing the time required to perform a line change; reduced warehouse and storage space; and reduced transportation costs. See specifically paragraphs 1 and 2 on page 6 of the specification.

In Par. 12 of the Office Action, the Examiner rejected claim 17 as obvious over the prior art as applied to claim 15 further in view of Crum. The Examiner asserts that Salemi teaches the claimed closure arranged of claim 17 except for a label covering substantially the exterior of the

closure. The Examiner further asserts that Crum teaches that it is known to provide a label covering substantially the exterior of the cap at the top wall.

The Applicant respectfully disagrees with the Examiner. The Salemi shrink band is shown in the Figures and is described in the text as being shrunk-fit *over* the cap. Assuming the Salemi shrink band was shrunk-fit over the Crum cap and label, only the shrink band would substantially cover the exterior of the closure (i.e. the shrink band would cover the label). In contrast, one embodiment of the shrink band of the present invention covers only the peripheral edge of the cap. Consequently, it is the Applicant's position that the Examiner has failed to establish a *prima facie* case of obviousness.

In Par. 13 of the Office Action, the Examiner rejected claims 19-22 as obvious over Hasper in view of Irish. The Examiner asserts that Hasper discloses an overcap with a closed end, a ring, and a shrink sleeve for the closure. The Examiner further asserts that Irish teaches that it is known to provide a closure disk with a shrink sleeve prior to application of the closure to a container neck.

The Applicant respectfully disagrees with the Examiner's rejection of claims 19-22. First, the shrink tube of Irish is structurally different than the shrink sleeve of the present invention, as discussed above. Second, the Examiner failed to show that either Hasper or Irish or the combination of them discloses a shrink sleeve being partially shrunk into engagement with a portion of said closure, which is called for by claims 19-22. Consequently, the Applicant respectfully submits that the Examiner has not established a *prima facie* case of obviousness.

For the foregoing reasons, the Applicants believe that the claims are sufficiently distinguished from the prior art and are in condition for allowance.

It is believed that no fee is due in connection with the present Amendment. In the event that the Applicant is mistaken, you are hereby authorized to deduct the required amounts from our Deposit Account No. 02-0400 (Baker & McKenzie). *When identifying such a withdrawal, please use the Attorney Docket Number BMO-129.*

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Respectfully,


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